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IN THE  
**Supreme Court of the United States**

**October Term, 1970**

**No. 84**

**THE UNITED STATES,**

***Petitioner,***

**vs.**

**MILAN VUITCH,**

***Respondent.***

**Motion for Leave to File a Brief as Amicus Curiae.**

Robert L. Sassone hereby respectfully moves for leave to file a brief amicus curiae in this case. The consent of the attorneys for the parties has not been obtained.

The interest of Robert L. Sassone in this case arises from the fact that he is the President of LIFE (League for Infants, Fetuses, and the Elderly, an organization of over a thousand individuals, including many clergymen, doctors and attorneys). The members of LIFE fear that declaring abortion control laws unconstitutional may lead to lessened respect for the value of human life.

Certain of the individual members of LIFE have examined certain of the recent lower court decisions, and briefs relating to the constitutionality of abortion control laws. These examinations have indicated that certain statistical, medical and sociological arguments by

defendants have not been answered, or that the answers have omitted important data. In addition, arguments in favor of the right to live of the unborn have omitted important data. The rights of the unborn are relevant in determining the constitutionality of the abortion control law in question. A lesser degree of certainty has been found acceptable in law such as the "reasonable man" of negligence law where the right to be protected is important and the subject matter does not lend itself to a high degree of precision.

The present brief sets forth data in short sections which may be read separately if the court feels that the data in any of the individual sections is relevant and not adequately set forth elsewhere.

Respectfully submitted,

ROBERT E. DUNNE,  
*Attorney for Amicus Curiae.*

Dated: June 30, 1970.

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in determining the constitutionality of the abortion control law in question. A lesser degree of certainty has been found acceptable in law such as the "reasonable man" of negligence law where the right to be protected is important and the subject matter does not lend itself to a high degree of precision.

The present brief sets forth data in short sections which may be read separately if the court feels that the data in any of the individual sections is relevant and not adequately set forth elsewhere.

### **Declaring the Present Law Unconstitutional May Not Reduce the Problems Caused by Illegal Abortions.**

Many authorities and studies have indicated that liberalization of abortion laws has increased rather than decreased the number of illegal abortions in Japan and Sweden,<sup>1</sup> Denmark,<sup>2</sup> Colorado<sup>3</sup> and California.<sup>4</sup>

### **A Woman's Right to Privacy and Right to Control Her Own Body Are Limited Rights.**

A woman's right to privacy does not extend so far as to permit her to kill her husband in the privacy of her marital bed. A woman's right to control her own body stops where the rights of other persons begin. For example, a woman's right to control her own body does not permit her to punch somebody else in the nose.

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<sup>1</sup>Rice, "The Vanishing Right To Live", p. 39.

<sup>2</sup>Shaw, "Abortion on Trial", p. 144.

<sup>3</sup>New York Times, December 8, 1969, p. 1.

<sup>4</sup>Dr. Lewis Saylor, State Director of Public Health.

## **The Mother's Right to Privacy and Right to Control Her Own Body Are Limited by Her Child's Right to Life.**

The Constitution and Bill of Rights were adopted a short time after the Declaration of Independence by many of the same men who had signed the Declaration of Independence, so that the ideals expressed in the Declaration of Independence are relevant in interpreting the Constitution and Bill of Rights. The Declaration of Independence indicates that all men have a right to life before birth and that this right is not given by the State or by their mother, and cannot be taken away by the State or by their mother.<sup>5</sup>

The question should be not whether the unborn has a right to life, but when the unborn child acquires a right to life. Nobody denies that a woman has a right to control her own body. The question is whether and when the woman's right to control her own body must be limited because of a conflict with the right of her unborn child over its own body. Certainly, the right to life is a more important right than the right to privacy.

At the first moment that the child has a right to life, the mother's right to privacy and right to control her own body cease to be sufficient to permit the abortion of the child. Of course, even after the mother's right to privacy and right to control her own body become insufficient reason for an abortion, the mother's right to life remains sufficient to permit an abortion.

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<sup>5</sup>"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness."

### **Number of Abortion Caused Deaths Is About 200 Annually.**

Certain investigators have estimated in widely publicized estimates that in the United States 5,000 women die each year from criminal abortions. Bates & Zawadski, *Criminal Abortion*, 3-4 (1964). An examination of the *Vital Statistics of the United States*, 1967, Vol. II, *Mortality Part A*, published by U.S. Department of Health, Education and Welfare, public health service, indicates the number of abortion caused deaths per year. Page 1-7 indicate that the number of deaths caused by abortion has remained relatively constant. Page 1-40 indicate that the number of abortion caused deaths in 1967 was 162. An inference can be made that the figures on page 1-40 include illegal abortion, since the number of non-white deaths is larger than the number of white deaths. Pages 1-150 and 1-151 indicate that relatively few abortion caused deaths are reported as deaths from unknown causes, since only about 1200 women of child bearing years (age 15-44) died from unknown causes, the number of deaths in the individual age groups corresponded more closely with the likelihood of death in the individual age groups than with the likelihood of pregnancy in the individual age groups, and the ratio of female deaths to male deaths during the child bearing years was comparable to the ratio in the non-child bearing years. For example, the ratio of female to male deaths was about 60 to 100 during the non-child bearing years and about 55 to 100 during the ages of 20-24.

## **Pregnancy Is Not More Dangerous Than Abortion During the First Trimester.**

U.S. Vital Statistics indicate a death rate from pregnancy of 0.5 persons per 100,000.<sup>6</sup> 0.1 per 100,000 deaths are caused by abortion, leaving 0.4 deaths per 100,000 caused by complications of pregnancy other than abortion. Superficially, it appears that pregnancy is 4 times as dangerous as abortion. However, the white death rate from pregnancy is less than 30% of the non-white death rate from pregnancy, showing that proper medical care would greatly reduce the 0.4 per 100,000 death rate from pregnancy.

The suicide rate is approximately 10 per 100,000, or 25 times the death rate from pregnancy.<sup>7</sup> The suicide rate among pregnant women is approximately 1/10th the suicide rate among the general public.<sup>8</sup> Accordingly, the reduction in the number of suicides in pregnant women more than makes up for all of the dangers of pregnancy.

In addition to deaths, there are psychological dangers in abortion of presently unknown intensity, duration and frequency. Simon says<sup>9</sup> that there are a wide variety of opinions by psychiatrists as to the after effects of abortion. It appears that nobody can tell at the present time with any degree of certainty what the harmful psychological after effects are likely to be in large groups or individuals, but they may be very severe.

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<sup>6</sup>"Vital Statistics of the United States, 1967, Vol. II, Mortality Part A", p. 1-7.

<sup>7</sup>*Ibid.* P. 1-40.

<sup>8</sup>David Granfield, "The Abortion Decision", pp. 104, 105.

<sup>9</sup>Nathan M. Simon, "Sequelae of Abortion", a Review of the Literature, 1935-1964, Arch. Gen. Psychiat. Vol. 15 October 1966, pp. 378-398.

Of course, unwanted pregnancies also can cause psychological problems in women. Unwanted pregnancies, however, have not been shown to be more dangerous emotionally than abortion.<sup>10</sup>

A large number of authors indicate that the dangers of pregnancy, do not greatly exceed the physical dangers of abortion, the alternative to continuation of the pregnancy.<sup>11</sup>

### **Characteristics of the Unborn Humans Killed by Abortions.**

The acts of a society may in time feed back to change the society. It is useful to know in detail what an abortion kills in order to determine whether the rights of the fetus killed should be closer to the rights of a fertilized egg, which may be killed with impunity, or the rights of a new born child.

The characteristics of the unborn human at each stage of his development are well known to medical science. The following short summaries of characteristics of unborn human beings at various stages of development may prove useful in determining at what stage a new human being is sufficiently developed to deserve rights which limit the rights of more mature human beings.

"Dr. Paul E. Rockwell, an M.D. of Troy, New York, has stated in the Albany Times-Union that I am not a religious person, but it is nevertheless my opinion that if the lawmakers and people

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<sup>10</sup>"Psychiatric Data Held Inadequate as Abortion Guide", Medical Tribune, Vol. 7, No. 72, Wed. June 15, 1966.

<sup>11</sup>Russell Shaw, "Abortion on Trial", pp. 70-97; David Granfield, "The Abortion Decision" pp. 83-121, Charles E. Rice, "The Vanishing Right To Live", pp. 36-48.

realize that very vigorous life is present (in even the youngest fetuses) . . . . abortion would be found much more objectionable than euthanasia."

"Eleven years ago while giving an anaesthetic for ruptured ectopic pregnancy (at two months' gestation) I was handed what I believe was the smallest living human being ever seen. The embryo sac was intact and transparent. Within the sac was a tiny (approx. 1 cm.) human male swimming extremely vigorously in the amniotic fluid, while attached to the wall by the umbilical cord. This tiny human was perfectly developed, with long, tapering fingers, feet and toes . . .

The body was extremely alive and swam about the sac approximately one time per second, with a natural swimmer's stroke. This tiny human did not look at all like the photos and drawings and models of 'embryos' which I have seen, nor did it look like the few embryos I have been able to observe since then, obviously because this one was alive!"<sup>12</sup>

Leading experts on intra-uterine transfusion, are convinced from their experiments that the child at the stage when abortions are usually performed can feel pain.

In the 7th week when the baby weighs one thirtieth of an ounce, if the upper lip is stroked with a fine hair, the arms move.

"The new body not only exists, it also works. The brain, in configuration already like the adult brain, sends out impulses that co-ordinate the func-

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<sup>12</sup>"Liberty 1", an article in "Triumph", April, 1970.

tioning of the other organs. The heart beats sturdily. The stomach produces some digestive juices. The liver manufactures blood cells and the kidneys extract some uric acid from the blood. The muscles of the arms and body can already be set in motion.

When the embryo reaches such completion safely and without impairment, it has a good start in life. Now it is ready to enter the next phase of development. Until adulthood, when full growth is reached between the years of twenty-five and twenty-seven, the changes in the body will be mainly in dimension and in the gradual refinement of the working parts."<sup>18</sup>

About four days after fertilization, there are sixteen cells in the new human. These cells have not yet been implanted so that implantation in the uterus can be prevented by a D & C up to about six or seven days after intercourse. At three to four weeks there is a beating heart. At six weeks the blood vessels from the heart are fully developed and all organs are present. At eight weeks there is readable brain electric activity and the name of the new human changes from embryo to fetus. At nine to ten weeks the child can swallow, squint and has many focal reflexes. At eleven weeks, the baby will suck its thumb and its skeletal details can be clearly seen by x-ray. At twelve weeks, you can take a fetal EKG via the mother. At sixteen weeks, the child can cry. At 20 weeks, it can survive outside the mother.

More than a month prior to the due date, most unborn humans are capable of surviving outside of the

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<sup>18</sup>Flanagan, "First Nine Months of Life", p. 44.



mother without the aid of an unusual artificial environment.

"Unborn babies have brain wave patterns 'similar in many respects to those of an adult', according to Dr. Edward J. Quilligan, chairman of the University of Southern California Department of Obstetrics and Gynecology.

The findings, arising from a series of studies of the central nervous system of the fetus in utero, have caused conjecture about whether learning can be started before an infant is born and whether a fetus can dream . . .

Indicative of paradoxical sleep, blood pressure and pulse rate dropped periodically and rapid eye movement was verified by electrodes in the corner of the fetus' eye in utero.

Various theories postulate that paradoxical sleep is a dream state or a period during which the individual synthesizes and stores the experiences of the previous day. Dr. Quilligan pointed out that though the fetus has always been thought to live in a protected environment, the studies proved the fetal heart rate could be changed by loud noises

. . .<sup>14</sup>

As can be seen from the foregoing descriptions, the unborn human as early as 7 weeks resembles an adult in many important respects. Immediately prior to birth, the unborn human resembles the newly born human in every way but one, he has not passed from his first environment into his second environment.

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<sup>14</sup>"The Modern Medicine", March 23, 1970, p. 43.



### **Birth Control by Morning After Pill or Intrauterine Device Differs From Abortion.**

The morning after pill and intrauterine device prevent the further development of one or more cells, which have not yet implanted or developed or grown significantly larger than the unfertilized egg. The group of cells killed has no brain, heart, organs, or independent means of mobility. In fact, the group of cells killed prior to implantation cannot even be called an individual, since twinning is possible after implantation.

### **Abortion Is Not Necessary for Population Limitation Purposes.**

Abortion is not even relevant to population limitation, since it is well known that a variety of birth control means each of which is safer to the woman than abortion, approach 100% effectiveness when used correctly over an extended period of time. Future research should further improve all means of birth control.

### **Abortion Will Soon Be Irrelevant to the Protection of Any Woman's Rights.**

Recent medical history shows a steady increase in the chances of a very young unborn human to survive and to survive without ill effects if the unborn human is prematurely separated from its mother. Experiments going back into the early 1960's<sup>15</sup> have indicated that artificial wombs for unborn humans are only a matter of time. It is expected that before the present decade ends,<sup>16</sup> that is sometime before 1980, any unborn

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<sup>15</sup>"Alive In An Artificial Womb", an article in "Life Magazine", August 28, 1964.

<sup>16</sup>Gordon Rattray Taylor "The Biological Time Bomb", pp. 37, 38, 207.

human being old enough to have developed a placenta may be removed from its mother, placed in an artificial liquid environment, fed food and oxygen from a heart-lung machine through its placenta, and enabled to develop until it can breathe and eat like a normal newborn child. In a matter of a few short years, any woman wishing to terminate an early pregnancy, will be able to terminate the pregnancy without the death of the child. The doctor will be able to carefully remove the placenta and child and give the child a chance to live, if the law protects the child.

A short look back at the history of contraceptives shows a rapid increase in knowledge and techniques capable of preventing pregnancies. It is likely that 100% certain, simple, inexpensive and safe means of birth prevention will become available before 1980, thereby preventing all unwanted pregnancies, except where the woman changes her mind after the pregnancy has begun.

### **Abortion Control Laws Do Not Establish a Religion.**

Over 100 different and sometimes mutually antagonistic Christian religions in America find guidance from the precepts of the New Testament. St. Luke's Gospel, Chapter 1, vs. 39-45 indicates that the unborn is also a child capable of human emotions. Mormons, Jehovah's Witnesses, and many non-Christian religions forbid abortion. Many persons not believing in any American religion such as Hippocrates, the author of the Hippocratic Oath, have believed abortion should be forbidden, or like Roman poet Ovid, have believed that abortion was worse than the conduct of wild animals.<sup>17</sup>

<sup>17</sup>Russell Shaw, "Abortion on Trial", p. 157. David Granfield, "The Abortion Decision", pp. 43-53. Charles E. Rice, "The Vanishing Right to Live", pp. 41 and 42.

## **There Is Great Danger to Society in Giving Women an Absolute Right to Abortion.**

A society which permits the execution of the very very young for frivolous reasons must take care lest a series of small steps lead to the execution of the very young, the very old and "undesirable" classes of humans. The experience of Nazi Germany is instructive in that abortion became prevalent about 1932. Subsequently, through a gradual process of small steps, voluntary and involuntary euthanasia became legal. Once a precedent is established that one type of human life can be executed for the mere convenience of another type of human life, the precedent may be applied to new situations unforeseen by those who originally established the precedent.

The fact that abortion has the potential to lead to disrespect for human life can be inferred from the manner in which abortion terminates human life. The victim, whose characteristics have been described previously, is innocent of all crime or wrong doing even if the father raped the mother. Even though the mother has received anesthetic, the victim will probably be able to feel pain, as is obvious to anyone who has ever seen a child cry who has just been born from a deeply drugged woman.

Professor Charles E. Rice has described abortion as follows:

"Make no mistake about it. An unborn baby, even a very small one, can put up a determined fight for life. An abortion can be born alive and can kick and go on kicking for quite a long time. It is not difficult to see this as a sort of slow murder. On the other hand, the baby can be killed

while still inside. Is there so much difference? The intention is the same.' . . .

Mrs. Jill Knight, a Member of the British Parliament, observed:

'In Sweden, if the child has not been killed by the operation, they drown it in a bucket like a kitten. The child will kick miserably until it dies.

They also do experiments on aborted babies. Put them in simulated wombs and feed them through the cord, poking them now and again to see if they are still alive.

Why not, I was told—no one wants these babies.' . . .

Listen to Dr. Alan Guttmacher, a leading proponent of abortion, describe the technique:

'A sharp curette is then inserted to the top of the fundus with very little force, for it is during this phase that the uterus is most likely to be perforated. Moderate force can be safely exerted on the down stroke. The whole uterine cavity is curetted with short strokes, by visualizing a clock and making a stroke at each hour. The curette is then withdrawn several times bringing out pieces of placenta and sac. A small ovum forceps is then inserted and the cavity tonged for tissue, much like an oysterman tonging for oysters. . . . In pregnancies beyond the seventh week, fetal parts are recognizable as they are removed piecemeal.'

When Dr. Guttmacher refers clinically to 'fetal parts,' he means arms, legs, a head, and the various other 'parts' that, moments before, comprised

a living human body. Incidentally, some doctors, including Dr. A. W. Liley of New Zealand and Professor James Scott of Leeds, both leading experts on intrauterine transfusions, are convinced from their experiments that the child at the stage when abortions are usually performed can feel pain."<sup>18</sup>

### **Conclusion.**

The statute in question in the present case should be declared constitutional.

### **Summary.**

An analysis of United States Vital Statistics shows approximately 200 abortion caused deaths in the United States annually. Nevertheless it cannot be said that abortion in the first trimester is safer than pregnancy because of the residual after effects of abortion. In addition, statistics indicate that pregnant women are less likely to die than comparable non-pregnant women because the pregnancy caused death rate is far exceeded by the reduced likelihood of suicide. Unborn humans closely resemble mature humans in far more characteristics than they differ. There is a danger that abortion on demand may lead to lessened respect for human life. The positive reasons for abortion are less compelling than the reasons for protecting the right to life of the unborn. Since present trends indicate lessened validity for the arguments for

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<sup>18</sup>Charles E. Rice, "The Vanishing Right To Live", pp. 42 and 43.

abortion in the future, and greater likelihood for survival of the unborn if they are separated from their mother without being killed, the degree of certainty of the law in question should be sufficient, and women should not be found to have an absolute right to execute their unborn children.

Respectfully submitted,

ROBERT E. DUNNE,

*Attorney for Amicus Curiae.*